

REMARKS

The Examiner rejected claims 1-20 under 35 USC 112, first paragraph, as failing to comply with the written description requirement. More specifically, the Examiner indicated that the term “flexible” in the claims is not supported by the original disclosure, which is indicated to semi-rigid materials. Applicants respectfully disagree with the Examiner for several reasons. As noted on page 13, lines 21-24 of the Specification, the present application incorporated by reference copending applications serial no. 08/822,730 and 08/823,377, which have issued respectively as patent numbers 5,958,538 and 5,882,764, copies of which are enclosed for the Examiner’s convenience. With regard to US patent 5,958,538, column 1, lines 19-22 states that “conventional floor mats are constructed of a flexible rubber and are formed with a plurality of spaced apart orthogonal ribs which form rectangular-shaped openings.” In addition, column 2, lines 14-16 of said patent state that “another objective is to provide a floor mat system in which the floor mat is constructed of a flexible, durable material which will withstand inclement weather.” With regard to this patent 5,882,764, column 1, lines 19-22 and lines 58-60.state the same things just recited with regard to the previous patent. Thus, Applicants have supported the term “flexible” in the claims by use of these patents incorporated by reference. In addition, it is known in the art that the term “semi-rigid” may be used in place of the term “flexible” with the same meaning. Plainly, a rigid structure is inflexible and a semi-rigid structure has some flexibility. In addition, the present application on page 6, lines 19-20 indicate that the framework 100 may be formed of rubber, which is commonly known to have flexibility. Moreover, page 3 of the Specification indicates that the invention provides a backing framework for a floor mat having anti-fatigue properties. A structure must have flexibility in order to provide such anti-fatigue properties. For all the above reasons, Applicants submit that the term “flexible” and the characteristics thereof have been amply supported by the Specification and the references incorporated by reference by the Specification. Applicants thus submit that the Examiner’s rejection with regard to

the term “flexible” is overcome with regard to claims 1-20 where the term “flexible” refers to the mat or the body of the mat.

The Examiner also indicated that there was no original disclosure directed to “being flexible about at least one reference line that is perpendicular to the longitudinal direction of the slot” in claims 1 and 16. Said language has been stricken from claim 1 and claim 16 has been canceled to overcome this rejection.

The Examiner rejected claims 1-20 under the judicially created Doctrine of Obviousness-Type Double Patenting as being unpatentable over claims 1-22 of US Patent 6,663,937. Applicants have filed a Terminal Disclaimer to overcome this rejection. Applicants have also enclosed as evidence of common ownership a copy of an assignment to the invention of US Patent 6,635,331 to R&L Marketing & Sales, Inc. and consequently to US Patent 6,663,937, which is based on a divisional application of US Patent 6,635,331. In addition, Applicants have submitted a copy of an assignment of application serial no. 09/274,360 from R&L Marketing Inc. to R&L Marketing & Sales, Inc. Application serial number 09/274,360 refers to the parent case from which the present CIP application originated. The assignment assigning said application to R&L Marketing Inc. was previously filed in the present case. Thus, Applicants submit that the Terminal Disclaimer and evidence of common ownership of the cited reference and the present application overcomes the Examiner’s rejection.

The Examiner rejected claim 1-3, 5-8, 10-16 and 18-20 under 35 USC 102(b) as being anticipated by WO 96/36268. The Examiner also rejected claims 1-3, 6-8, 10-16, 18 and 19 under 35 USC 102(b) as being anticipated by Sijpesteijn. The Examiner also rejected claims 1-3, 6-8, 10-16 and 18-20 under 35 USC 102(b) as being anticipated by Kessler et al. (US patent 4,796,399). The Examiner also rejected claims 4, 9 and 17 under 35 USC 103(a) as being unpatentable over WO 96/36268 in view of Yamamoto et al.

As noted above, the Examiner rejected claim 1-3, 5-8, 10-16 and 18-20 under 35 USC 102(b) as being anticipated by WO 96/36268. In establishing a *prima facie* case of anticipation under 35 USC § 102, the Examiner must find every

element of the applicant's claim in a single reference. Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 2 USPQ2d 1051 (Fed. Cir. 1987). Other references may be used only to interpret the allegedly anticipated reference. Studiengesellschaft Kohle, m.b.H. v. Dart Industries, Inc., 726 F.2d 724, 220 USPQ 841 (Fed. Cir. 1984). This idea was similarly upheld in Scripps Clinic & Research Foundation v. Genentech, Inc., 927 F.2d. 1565, 18 USPQ2d. 1896 (Fed. Cir. 1991), wherein the Court held that, "Invalidity for anticipation requires that all of the elements and limitations of the claims are found within a single prior art reference."

Applicants submit that the present invention is distinct from the cited references. Applicants invention includes a plurality of upper ribs which are elongated in a first substantially horizontal direction and a plurality of lower ribs which extend in a second substantially horizontal direction which is transverse to the first direction and is preferably perpendicular thereto. The flexible body formed by the strips defines a plurality of substantially parallel slots for receiving respective plurality of material strips which are removably and reattachably connected to the body. The body is preferably formed as a single unit and more preferably is molded from plastic or rubber. The body defines a plurality of flow-through openings extending from the upper surface to the bottom surface of the body. These flow-through openings include a plurality of flow-through openings which are intermediate each pair of adjacent slots to enhance the drainage through the body of the mat. The material strip-receiving slots each have a cross-sectional configuration and the flow-through openings each have a cross-sectional configuration which is different than the cross-sectional configuration of the slots.

Applicants have amended claim 1 to recite in part that the plurality of flow-through openings includes a plurality of flow-through openings intermediate each adjacent pair of slots. By contrast, the WO reference does not teach flow-through openings intermediate the slots, but rather teaches chevron-shaped channels in the upper surface of strip 16 in Fig. 1 and channels 54 including transverse channels 54A and crisscross channels 54B in the upper surface of strips 46. These channels do not extend through the mat but rather are formed in the upper surface whereby

water flows toward the carpet strips. To the contrary, Applicants' invention allows water to flow through the flow-through openings between the slots where material strips are inserted, thus preventing more water from collecting in the material strips. Thus, the WO reference fails to teach or suggest the flow-through openings intermediate each pair of adjacent slots as recited in amended claim 1. Therefore, Applicants submit that claim 1 is allowable and that claims 2, 3, 5-8, 11 and 12 are allowable as depending from claim 1. Claim 10 has been canceled.

Similarly, claim 13 has been amended to indicate in part that the upper ribs define a plurality of flow-through openings intermediate each adjacent pair of slots. With reference to the argument concerning claim 1, the WO reference fails to teach or suggest this limitation and Applicants therefore submit that claim 13 is allowable. Applicants further submit that claims 14, 15 and 18-20 are allowable as depending from claim 13. Claim 16 has been canceled.

As noted above, the Examiner rejected claims 1-3, 6-8, 10-16, 18 and 19 under 35 USC 102(b) as being anticipated by Sijpesteijn. Claim 1 has been amended to indicate in part that the flexible body is formed as a single unit. As originally claimed, claim 1 also recites that the flexible body defines a plurality of spaced slots. By contrast, Sijpesteijn is formed with a plurality of elongated rails 2 (Fig. 1) each of which partially defines a single slot for receiving a strip of carpet 30 (Fig. 2). Each elongated rail 2 is connected to an adjacent rail 2 by the connection of a U-shaped member 6 on one rail and a T-shaped member 8 on the adjacent rail. In order to form the completed slot 3 (Fig. 1), a portion of the T-shaped member 8 extends beyond upstanding edge 4' of the U-shaped member 6 and above bottom portion 10 which bounds the slot 3. Thus, the receiving slot 3 is not completely formed by a single rail 2 nor is there more than one carpet receiving slot formed in any one of rails 2. Therefore, Sijpesteijn teaches away from a flexible body which is formed as a single unit and which defines a plurality of slots for receiving a material strip. Applicants thus submit that claim 1 is allowable and that claims 2, 3, 6-8, 11 and 12 are allowable as depending from claim 1. Claim 10 has been canceled as noted above.

Regarding claim 13, Applicants have amended said claim to indicate that the upper ribs are elongated in a first substantially horizontal direction and the lower ribs are elongated in a second substantially horizontal direction transverse to the first direction. By contrast, Sijpesteijn teaches elongated ribs or other structural members which are elongated in a single horizontal direction. This is in keeping with the concept of Sijpesteijn of using a plurality of elongated rails 2 which may be joined together to form a floor mat. However, this concept teaches away from the upper ribs and lower ribs transversely extending as claimed by Applicants. Applicants therefore submit that claim 13 is allowable and that claims 14, 15, 18 and 19 are allowable as depending from claim 13. Claim 16 has been canceled as noted above.

As noted above, the Examiner rejected claims 1-3, 6-8, 10-16 and 18-20 under 35 USC 102(b) as being anticipated by Kessler et al. (US patent 4,796,399). As previously noted, claim 1 has been amended to indicate that there are a plurality of flow-through openings intermediate each adjacent pair of slots. In addition, claim 1 has been amended to indicate that the material strip-receiving slots each have a cross-sectional configuration and the flow-through openings each have a cross-sectional configuration which is different than the cross-sectional configuration of the slots. By contrast, Kessler et al. '399 teaches a mat having a plurality of upper ribs and lower ribs extending transversely thereto with the upper ribs defining carpet-receiving slots therebetween without any flow-through openings in the mat between each adjacent pair of the carpet-receiving slots. As noted with regard to the WO reference, the configuration of Kessler et al. '399 forces any water falling on the upper ribs to flow into the carpet strip as opposed to flowing through flow-through openings to the bottom of the mat as with the present invention. In addition, Kessler et al. '399 fails to teach or suggest flow-through openings having a cross-sectional configuration which is different from the cross-sectional configuration of the material strip-receiving slots. Kessler et al. '399 teaches a plurality of such slots all of which are identical and configured to receive a strip of carpet. Therefore, Applicants submit that Kessler et al. '399 teaches away from

and/or fails to teach or suggest these limitations in amended claim 1 and that claim 1 is therefore allowable. Applicants further submit that claims 2, 3, 6-8, 11 and 12 are allowable as depending from claim 1. As noted, claim 16 has been canceled.

With regard to claim 13, as previously noted, the claim has been amended to indicate that the upper ribs define a plurality of flow-through openings intermediate each adjacent pair of slots. Also as previously noted, claim 13 has been amended to indicate that the cross-sectional configuration of each flow-through opening is different from the cross-sectional configuration of the material strip-receiving slots. As noted with regard to claim 1, Kessler et al. '399 teaches away from and/or fails to teach or suggest these limitations and Applicants therefore submit that claim 13 is allowable and that claims 14, 15 and 18-20 are allowable as depending from claim 13. As noted previously, claim 16 has been canceled.

As noted above, the Examiner rejected claims 4, 9 and 17 under 35 USC 103(a) as being unpatentable over WO 96/36268 in view of Yamamoto et al. As noted above, Applicants have amended claims 1 and 13 and submit that claims 4 and 9 are allowable as depending from claim 1 and that claim 17 is allowable as depending from claim 13.

Applicants have added new claims 21-29, including new independent claim 27. Applicants submit that claims 21-29 present new combination not previously considered and are neither taught nor suggested by the cited references.

Claim 21 recites that the flexible body is molded as an integral one-piece member, which further defines Applicants invention in particular over Sijpesteijn.

Claim 22 recites that each flow-through opening is bounded by an adjacent pair of upper ribs and adjacent a pair of lower ribs, also further defining over Sijpesteijn in particular.

Claim 23 recites that each material strip-receiving slot has attachment means for connecting one of the material strips to the flexible body and that each flow-through opening is free of attachment means for connecting one of the material strips to the body. Applicants submit that this limitation in particular further defines over Kessler et al. '399 and that claim 23 is independently allowable.

Claim 24 indicates that the width of each flow-through opening is no more than 1/3 the width of each slot. In particular, Kessler et al. teach away from this limitation, as each slot of that reference is identical so that the width is the same for each slot.

Claim 25 indicates that the width of each flow-through opening is no more than one fourth the width of each slot. Similar to claim 23, this limitation even further defines over Kessler et al. in particular.

New claim 26 is the same as claim 23 except that it depends from claim 13 and Applicants submit that it is allowable for the same reasons as claim 23.

New independent claim 27 indicates that parallel slots formed in the flow-through mat each have a length and width and that each lower rib extends transversely to the length of the slots and spans the respective widths of at least two adjacent slots. This limitation in particular defines over Sijpesteijn, which first fails to teach or suggest lower ribs which extend transversely to the length of the slots and in addition fail to teach or suggest that the lower ribs span the widths of at least two adjacent slots. As previously noted, Sijpesteijn is formed in a plurality of elongated rails 2 each defining partially a single slot for receiving a carpet strip therein. Thus, Sijpesteijn cannot teach a lower rib which extends transversely to the slots and spans the widths of at least two slots. As previously discussed with claims 1 and 13, claim 27 recites a plurality of flow-through openings intermediate each adjacent pair of slots, a limitation which is neither taught by the WO reference or Kessler et al. '399. Like claims 1 and 13, claim 27 also indicates that the cross-sectional configuration of each flow through opening is different from the cross-sectional configuration of the material strip-receiving slots. Applicants submit that this further makes claim 27 allowable for the same reasons as regarding claims 1 and 13 with regard to this limitation. Applicants therefore submit that claim 27 is allowable and that claim 28 and 29 are allowable as depending therefrom.

Claim 28 recites that the lower ribs span the entire mat body, a limitation which further defines over Sijpesteijn.

Claim 29 is the same as claim 23 except it depends from claim 27 and Applicants submit that it is therefore allowable for the same reasons as claim 23.

Inasmuch as Applicants' invention includes a mat having a flexible body formed as a single unit having a plurality of elongated slots for receiving a material strip therein wherein a plurality of flow-through openings is disposed intermediate each adjacent pair of slots and wherein the cross-sectional configuration of the slots are different than the cross-sectional configuration of the flow-through openings; a flexible mat having upper and lower intersecting ribs with the upper ribs being elongated in a first substantially horizontal direction and the lower ribs being elongated in a second substantially horizontal direction transverse to the first direction and wherein the upper ribs define a plurality of flow-through openings intermediate each adjacent pair of slots and wherein the cross-sectional configuration of the slots are different than the cross-sectional configuration of the flow-through openings; and a mat having a flexible body of intersecting upper and lower elongated ribs with the upper ribs defining parallel slots having a length and a width and the lower ribs extending transversely to the length of the slots and spanning the respective widths of at least two adjacent slots and wherein the upper ribs define a plurality of flow-through openings intermediate each adjacent pair of slots and wherein the cross-sectional configuration of the slots are different than the cross-sectional configuration of the flow-through openings; Applicants submit that the present invention is patentably distinct over the cited references.

In light of the above-noted amendments and related arguments, Applicants submit that claims 1-9, 11-15 and 17-29 are allowable over the cited references.

In view of the foregoing, the Applicant respectfully requests reconsideration of the claims and most earnestly solicits the issuance of a formal notice of allowability for the claims. Please call the undersigned attorney if any questions remain after this amendment.



Respectfully submitted at Canton, Ohio this 30th day of August,
2004.

SAND & SEBOLT

A handwritten signature in black ink.

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Karina A. Butler